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DEPARTMENT OF THE TREASURY  
DIVISION OF THE RATEPAYER ADVOCATE  
31 CLINTON STREET, 11TH FLOOR  
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**Blossom A. Peretz**  
**Director**

BRIAN W. CLYMER  
State Treasurer

CHRISTINE TODD WHITMAN  
Governor

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April 10, 1996

**VIA FEDERAL EXPRESS**

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: In the Matter of Implementation of Section 301(j)  
of the Telecommunications Act of 1996  
Aggregation of Equipment Costs By Cable Operators  
(CS Docket No. 96-57)

TO THE HONORABLE COMMISSION:

Enclosed please find an original and nine copies of Comments to be filed with the Commission in the above-referenced matter. Please time/date stamp the additional copy and return it to the undersigned in the enclosed, stamped envelope. In addition, two additional copies are marked as "Extra Public Copy" pursuant to the FCC's Public Notice of March 22, 1996.

Respectfully submitted,

Blossom A. Peretz  
Ratepayer Advocate

Encl.

c: Lenworth Smith, Jr., FCC Cable Services Bureau  
2033 M Street, N.W., Room 805E, Washington, D.C. 20554

International Transcription Services, Inc., 2100 M St., N.W.  
Suite 140, Washington, D.C. 20037

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Before the  
Federal Communications Commission  
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Implementation of Section 301(j)	)	CS Docket No. 96-57
of the Telecommunications Act	)	
of 1996	)	
	)	
Aggregation of Equipment Costs	)	
By Cable Operators	)	
	)	
	)	

COMMENTS OF THE STATE OF NEW JERSEY  
DIVISION OF THE RATEPAYER ADVOCATE

# **I. Introduction**

On behalf of cable television subscribers in the State of New Jersey, the Division of the Ratepayer Advocate (the "Ratepayer Advocate") hereby submits comments in the above-referenced proceeding to ensure that the new Federal Communications Commission ("FCC" or "Commission") rules adequately protect cable subscribers and preserve state/local oversight of

cable rates.

The Ratepayer Advocate was established in 1994 by Governor Christine Todd Whitman's Government Reorganization Plan. See 26 N.J.R. 2171 (June 6, 1995). It seeks to represent and protect the interests of all utility consumers--residential, small business, commercial and industrial, to ensure that they receive safe, adequate and proper utility service at affordable rates that are just, reasonable and nondiscriminatory. The Ratepayer Advocate is a statutory intervenor in cases where cable operators seek to alter their rates or services through filings made at the New Jersey Board of Public Utilities (the "BPU").

On March 20, 1996, the FCC released a Notice of Proposed Rulemaking ("NOPR") seeking comments on proposed rules that would allow cable operators to aggregate their customer equipment costs into broad categories on a franchise, system, regional, or company level. Furthermore, the NOPR proposes that each category could contain equipment "having the same primary purpose," without regard to level of functionality. The proposed rules would not permit such aggregation with respect to equipment used by subscribers who receive only basic tier service. The instant rulemaking is prompted by legislative amendments in the 1996 Telecommunications Act (the "Act"). See 47 U.S.C. Sect. 543(a)(7)(A).

As set forth below, the Ratepayer Advocate respectfully recommends that the FCC permit, but limit, the aggregation of costs as permitted by the new Act to the intrastate level. Any aggregation for basic-service equipment at some higher organizational level (beyond the immediate franchise) should be subject to the consent of the franchise authority.

## **II. Discussion of the Issues**

### **A. Background**

The Commission's current rules require separate charges for each "significantly different" type of remote, converter box, and other customer equipment. See 47 C.F.R. 76.923. Furthermore, cable operators are currently permitted to aggregate equipment on organizational levels in a manner consistent with their accounting practices as of April 3, 1993. Small system operators are currently permitted to aggregate their equipment costs at any organizational level, subject to certain rate safeguards. Id.; see also 9 FCC Rcd 4119 (1994).

The Telecommunications Act of 1996 requires the Commission to promulgate rules to allow cable operators to aggregate their equipment costs into broad categories, regardless of functionality. 47 U.S.C. Sect. 543(a)(7)(A). It further requires the Commission

to promulgate rules to allow aggregation on a franchise, system, regional, or company level. Id.

B. Cost Categorization

In Paragraph 8 of the NOPR, the FCC tentatively concludes that the intent of the Telecommunications Act of 1996 is to allow classification of equipment on the basis of the "primary purpose of the equipment," without regard to functionality. However, in Paragraph 9 the Commission seeks comments on whether it is necessary to define "level of functionality" with regard to the categorization of customer equipment.

The Ratepayer Advocate believes that it is necessary to define "level of functionality" and to limit the categorization of costs to those elements of customer equipment that provide common functionality. If various types of equipment capable of providing multiple levels of functionality are categorized together, the result will be cross-subsidization between different classes of customers. For example, there are several types of converters currently available, with varying degrees of functionality. For example, one New Jersey cable company in its Form 1205 filing identified three different converter types identified as in use-- non-addressable, addressable, and on-screen display. Non-addressable converters are the company's lowest level of service

converter. The addressable converter has the ability to communicate with the cable headend. The on-screen display converter provides on-screen display programming in addition to the ability to communicate with the headend.

If all converters are aggregated in one equipment category, without providing adequate definition to the "level of functionality" which distinguishes them, the result will be that ratepayers who desire a low level of functionality (and perhaps a limited number of channels) may be subsidizing ratepayers obtaining a higher degree of functionality. Moreover, the Ratepayer Advocate believes that addressable and non-addressable converters contain at least two distinct levels of functionality- a disparity that should be taken into account when evaluating equipment costs and rates. In order to avoid the potential for cross-subsidization, the Ratepayer Advocate recommends that "level of functionality" be defined, i.e. based upon such characteristics as the number of channels and services available or other pertinent factors.

Paragraph 10 of the NOPR tentatively concludes that additional connections should not be aggregated with initial connections. The Ratepayer Advocate agrees. The Ratepayer Advocate also agrees with the Commission's statement in Paragraph 9 of the NOPR that it adopt a rule amendment to make "explicit" the requirement that "[b]ecause

equipment rates to subscribers must be based on actual costs, operators must base equipment charges on the same aggregation level as their costs."

C. Organizational Level

The NOPR proposes, in Paragraph 11, that the current rules be amended to allow customer equipment cost aggregation at the franchise, system, regional, or company level. In New Jersey, customer equipment rates are currently reviewed and approved by the New Jersey Board of Public Utilities (BPU). In their filings with the BPU, many cable operators have aggregated multiple franchises and systems. The Ratepayer Advocate has not taken issue with such aggregations although has consistently requested documentation from the cable operators to support cost allocations.

The Ratepayer Advocate does, however, recommend that such aggregation be limited to those cable services provided within each state. Thus, in the case of multi-state companies, the Advocate opposes aggregation at the nationwide company level. Furthermore, the Advocate opposes aggregation at the regional level, if a proposed region spans two or more states. Since states differ with regard to their regulatory structures, it would be difficult to review and approve rates for service areas aggregated at multi-state levels. Moreover, decisions of one state regulatory body

with regard to specific adjustments of cable rates, may result in cost shifting that could affect multiple state jurisdictions. Although the FCC appears to have endorsed multi-state regionalized equipment rates for Time Warner Cable pursuant to its "Social Contract" Order (DA 95-2491 released December 15, 1995), the FCC must recognize that this Order has been judicially appealed and that as a matter of policy and uniformity, Time Warner should not be exempted from rules adopted in this proceeding.

Since the BPU has jurisdiction over customer equipment charges for all cable operators within the State of New Jersey, aggregation on a state level (i.e. beyond a single franchise) could be easily administered in New Jersey. The Advocate recognizes, however, that other states may have greater difficulties in administering rates that are aggregated, particularly if municipal franchise authorities retain the jurisdiction independently to review and approve cable rates for its franchise area(s). Therefore, the Advocate urges the FCC to carefully consider comments from entities in other states with regard to administrative difficulties that may arise as the result of aggregation.

Regardless of statewide or local franchise review authority, the FCC must continue to permit franchise authorities to request and seek backup information on any revised Form 1205 for aggregated



equipment and installation costs. Since the calculations made on FCC Form 1205 are based on past, not projected costs, such supporting financial data should be easily available. For example, documentation may include the submission of Balance Sheets and Income Statements, Trial Balance or a General Ledger for the fiscal year; Certification of the Source of the Federal and State Income Tax Rates Reflected on Schedule A; Identification of Equipment Repair Servicers; the basis for Installation Charges-use of averages or Hourly Service Rate ; and any other information to demonstrate the basis for, and reasonableness of, cost allocations.

D. Installation Charges.

In Paragraph 12 of the NOPR, the Commission seeks comments on its proposal regarding aggregation of installation charges. The Commission has concluded that the Telecommunications Act of 1996 did not intend that the same level of cost aggregation available to customer equipment be extended to installation rates. The Ratepayer Advocate agrees with the observation that installation rates can and do vary to a greater extent than customer equipment rates, and that installation rates are further influenced by factors specific to each geographic area. This variation is perhaps not as significant in New Jersey as it could be in other

states, given that New Jersey covers a relatively compact and dense geographic area and installation rates are currently under the jurisdiction of the BPU, rather than under the jurisdiction of each specific franchisor. These two factors have facilitated some aggregation of installation charges by cable operators. Such installation charges are currently aggregated at the same level as customer equipment charges. For some operators, this reflects aggregation on a system basis, while for others it reflects aggregation on a regional basis. While the Ratepayer Advocate does not oppose the aggregation of customer installation charges, we believe however that installation charges should not be aggregated at a multi-state level.

#### E. Basic-Only Subscriber Equipment

Paragraph 13 of the NOPR seeks comments on the proposal to allow aggregation at higher organizational levels for basic-only subscriber equipment, provided that only equipment related to basic-only service is aggregated. The Ratepayer Advocate concurs with the recommendation to allow such aggregation provided that the consumer protection concerns raised herein are addressed in the final rules. Furthermore, the Ratepayer Advocate also concurs with the exclusion of other types of equipment from the baskets designated as basic-only equipment.

The Advocate is concerned that there could be differences between franchises regarding the types of equipment necessary for the provision of basic service only. In order to comply with the spirit of the objective to aggregate basic service-only equipment, the Ratepayer Advocate recommends that the level of aggregation (franchise, system, regional, company) be limited to a "common denominator" with respect to the equipment necessary to provide basic service. Therefore, the Ratepayer Advocate does not object to the aggregation of basic service-only equipment on a franchise, system, regional, or company level, provided that all franchise areas require the same customer equipment to receive basic service. As previously discussed for other customer equipment and installation charges, the Ratepayer Advocate believes that any such aggregation should be limited to an intrastate level.

F. Equipment Rate Jurisdiction and Review

In Paragraph 14, the FCC seeks comments on methods to facilitate review of aggregated cost data and rates by local franchising authorities. Since jurisdiction for basic cable rates and equipment and installation charges is by statute designated to the Board of Public Utilities in New Jersey, there is no practical problem with the aggregation outlined in the NOPR, except to the extent that such aggregation could extend across state lines, which

we would oppose.

The FCC seeks comment on "whether there is an alternative that could be more administratively efficient for local franchising authorities and cable operators alike." (NOPR at para. 14, emphasis supplied). The Ratepayer Advocate objects to any FCC proposal or "alternative" which would remove states' and localities' existing authority to review subscriber rates, as required by the Act and the Cable Television Consumer Protection and Competition Act of 1992.

G. Form 1205 Changes

In Paragraph 15, the Commission requested comments on changes that it proposed to FCC Form 1205. The Ratepayer Advocate generally concurs with the specific changes recommended by the Commission, with two exceptions. First, as noted above, we believe that aggregation should be limited to equipment located in each state's jurisdiction. Second, we believe that the level of functionality should be a determining factor in establishing equipment categories for rate averaging, and we recommend that "level of functionality" be clearly defined and identified on the Form 1205 and backup materials.

### III. Summary

The Ratepayer Advocate supports the FCC recommendations contained in its NOPR regarding aggregation of customer equipment charges at the franchise, system, regional, or company level, provided that such aggregation is limited to the franchise(s) located within an individual state. Furthermore, the Ratepayer Advocate is not opposed to similar aggregation for installation charges, although such aggregation may be more difficult in state jurisdictions that encompass large geographic areas and more numerous communities of interest.

With regard to aggregation of equipment into specific equipment baskets, the Ratepayer Advocate recommends that the level of functionality be a factor in the final rules on aggregation in order to avoid cross-subsidization between customer classes. To that end, the Advocate recommends that functionality be clearly defined, i.e. by reference to channels, services or other pertinent factors. Finally, the Advocate supports aggregation of basic-only equipment costs, provided that all franchises that are aggregated into a common level have the same equipment requirements for basic service-only service.

The guiding principle in adopting equipment aggregation rules must be the protection of cable subscribers. In New Jersey, this

goal is expressly recognized in the state's "Cable Television Act" which provides, in part, that "the policy of this State [is] to provide fair regulation of cable television companies in the interest of the public; [t]hat the objects of such regulation are (1) to promote adequate, economical and efficient cable television service to the citizens and residents of this State." See N.J.S.A. 48:5A-2 et seq. The sanctity of franchise jurisdiction over the regulation of basic service equipment rates (in the case of New Jersey, the state Board of Public Utilities ) must be recognized and weighed by the FCC, in the interests of preventing unfair subsidization and protecting consumers. The Ratepayer Advocate opines that these concerns can be successfully met in carefully-crafted FCC rules permitting aggregation.

Respectively Submitted,

A handwritten signature in black ink, reading "Blossom A. Peretz". The signature is fluid and cursive, with a large initial 'B' and a stylized 'P'.

Blossom A. Peretz, Esq.  
Ratepayer Advocate

Dated: April 10, 1996